

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY THIRTY-THREE

JURY VIEW

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Monday, March 16, 2015
7:55 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY

3 By: William D. Weinreb, Alope Chakravarty and

4 Nadine Pellegrini, Assistant U.S. Attorneys

5 John Joseph Moakley Federal Courthouse

6 Suite 9200

7 Boston, Massachusetts 02210

8 On Behalf of the Government

9 FEDERAL PUBLIC DEFENDER OFFICE

10 By: Timothy G. Watkins, Federal Public Defender

11 51 Sleeper Street

12 Fifth Floor

13 Boston, Massachusetts 02210

14 - and -

15 CLARKE & RICE, APC

16 By: Judy Clarke, Esq.

17 1010 Second Avenue

18 Suite 1800

19 San Diego, California 92101

20 - and -

21 LAW OFFICE OF DAVID I. BRUCK

22 By: David I. Bruck, Esq.

23 220 Sydney Lewis Hall

24 Lexington, Virginia 24450

25 On Behalf of the Defendant

P R O C E E D I N G S

(The following proceedings were held off the courthouse premises:)

THE COURT: I just want to begin by putting on the record that we are assembled here in the warehouse to view the boat that is at issue in the case. Counsel for both sides are present: Ms. Clarke, Mr. Bruck, Mr. Watkins; Mr. Weinreb for the government, Mr. Chakravarty and Ms. Pellegrini. And the procedure will simply be that the jury will be seated, I'll have a few remarks to them about how they should view the boat.

This is essentially a non-speaking occasion. My thought is that the jurors will be able to walk around on the ground level, just circulate, and then they'll go up on the platform that is a fixed platform on the starboard side of the boat. And I've asked the custodians here to have a movable forklift so that they can also go up on the portside so they can see the interior from that side as well.

MR. CHAKRAVARTY: Your Honor, on that issue, law enforcement/government officials have, frankly, expressed a liability concern in doing that. I indicated to them that pursuant to the court order they should make that happen.

THE COURT: I've had a similar conversation with them off the record. I did it myself at the other warehouse so I think it could be safely done. We'll be careful.

So that's about it. I mean, this is, again, not an

1 occasion for anybody to be particularly commenting, including
2 myself, except to invite them to view what they want to view
3 and make notes, take the time to look at whatever they want.
4 There were a few things that the defense had suggested they be
5 called -- their attention be called to including the engine
6 block and some cutouts. There are some cutouts, I guess, in
7 the stern. Isn't there a cutout? I'm happy to do that. I
8 would like to know what the significance is, myself, if any.

9 MR. WATKINS: I don't know exactly what the
10 significance is. Certainly two wood slats were cut out. I
11 think the jury's going to see that.

12 THE COURT: Well, there's one square on the stern.
13 Where's the other one?

14 MR. WATKINS: On the portside here on the inside.

15 THE COURT: Near where the writing is?

16 MS. CLARKE: Yes. Down at the bottom there were two
17 slats.

18 THE COURT: And the engine block?

19 MR. WATKINS: That was just really to guide the jury
20 for what I think is going to be at least some of the evidence.
21 That's where this knit hat was found that the government is
22 going to introduce.

23 THE COURT: And a knit hat was found?

24 MR. WATKINS: A knit hat.

25 MR. WEINREB: We have no objection to their attention

1 being drawn to the engine block. We also think that's
2 significant.

3 THE COURT: All right. Where is it, right in the
4 center?

5 MR. WEINREB: Right in the center, that big white
6 rectangle thing sticking up. Other than that, the Court is not
7 going to be directing them to blood, if any?

8 THE COURT: No, I'm not going to direct them to blood
9 or bullet holes. It's obvious. The one thing that I think
10 they'll be able to see is the location of the writing. I think
11 it's obvious, but perhaps it would be useful. They've already
12 seen the writing.

13 MR. WEINREB: I think the experience of many of us
14 first looking at the boat, it's a little hard to -- you don't
15 know where you're looking at. So I would --

16 THE COURT: So you're agreeing with that?

17 MR. WEINREB: I'd propose it should be pointed out.

18 THE COURT: Good. So this shouldn't take long. It's
19 up to the jurors. I'll give them, within reason, as much time
20 as they need.

21 MR. WATKINS: Judge, in regard to the blood on the
22 back of the boat, that's not immediately obvious because it's
23 faded over time down there. I don't know whether that is
24 something the judge can point out. They wouldn't see it unless
25 you actually looked for it.

1 THE COURT: Where is it? Can you describe it? Is it
2 on the interior or exterior?

3 MR. WATKINS: It's on the exterior. It's on the
4 middle left side. You can see it but I -- probably just
5 because I know it's there I could see it, but a juror looking
6 at it might not see that.

7 THE COURT: I'm not sure what the significance is.

8 MR. WATKINS: It is difficult to forecast in advance,
9 but I believe Mr. Henneberry will talk about going up to a
10 particular point of that boat where the shrink wrap was undone.
11 And I think what we would want -- I think the inference is
12 going to be that Mr. Tsarnaev was already bleeding by the time
13 he was getting into the boat because that's where the blood
14 trail is.

15 THE COURT: Okay. The bags that are on the other side
16 I'm told are just containing the shrink wrap that was used to
17 wrap the boat.

18 MS. CLARKE: Right.

19 THE COURT: They have it there as biohazard.

20 MS. CLARKE: And apparently the wood is what the
21 shrink wrap rested on.

22 THE COURT: That's what I'm told. So as a general
23 matter, then, I'm not sure there's any disagreement with this,
24 the boat, except for the cutouts, as I understand it, is in the
25 condition it was found in. I don't know about the cutouts or

1 not.

2 MR. WEINREB: That's true of the boat as a physical
3 object. The inside of the boat, there were things that had
4 been removed.

5 MS. CLARKE: And the shrink wrap has been removed.

6 MR. WEINREB: And the shrink wrap has been removed.

7 THE COURT: By the shrink wrap, you mean -- you're
8 talking about the tarp?

9 MS. CLARKE: It was covered in a --

10 MR. WEINREB: It was shrink-wrapped and
11 unshrink-wrapped at various times since then.

12 THE COURT: Just for casual reporting, I thought it
13 was a tarp rather than shrink wrap.

14 MR. WEINREB: When Mr. Henneberry would winterize it,
15 he would shrink-wrap it and then put a tarp over it.

16 THE COURT: So it was shrink-wrapped?

17 MR. WEINREB: At the time of the incident.

18 MR. CHAKRAVARTY: Your Honor, just for the record, in
19 terms of adaptations to the boat, the cutout, we had confirmed
20 that the cutout in the rear of the boat was for purposes of the
21 FBI's analysis of the bullet trajectories and was purely a view
22 port so they could see in the transom, I guess, of the boat.
23 And that's what the rear is.

24 And the other portion they're referring to was the two
25 slats that were removed from the boat that had writing on it.

1 These actually had screws. But we do agree that was -- it's
2 relevant evidence.

3 THE COURT: Okay.

4 MR. WEINREB: Your Honor, I don't know if you put on
5 the record that the defendant is also present.

6 THE COURT: I did not, but he is present.

7 MS. CLARKE: Thank you.

8 THE COURT: So the jury is on the way, and they'll
9 come in and sit here and I'll probably go over to them -- and
10 you can move your chair -- and I'll say a few things. Listen
11 in. And then they'll be on their way.

12 (Pause.)

13 (The jury enters the warehouse at 8:20 a.m.)

14 THE COURT: Good morning, jurors.

15 THE JURORS: Good morning.

16 THE COURT: Thank you for being here.

17 THE JURORS: Thank you.

18 THE COURT: I'm going to keep my hands in my pockets.

19 As you can appreciate now, obviously, we brought you
20 here this morning so you could take a look at the boat which
21 you've heard about and will probably hear more about. This is
22 an opportunity to view the physical setup of the boat, its
23 characteristics and so on. As a matter of fact, in the legal
24 terminology that applies to this kind of event, this is called
25 a jury view of the boat.

1 There will be no other evidence taken. No one is
2 going to give testimony or anything; it's just an opportunity
3 for each of you to make whatever observations you think are
4 important to you to help you understand any issues in the case.

5 The procedure we'll follow is you will first -- you
6 see it's on a flatbed. You'll be able to walk all the way
7 around and take -- make observations from this level of
8 anything. You're free, of course, to take notes. Please don't
9 talk with each other about it. This is only your individual
10 opportunity to look at the boat.

11 After you've had a chance to walk around on the ground
12 level, then there's a platform, a fixed platform on the other
13 side you'll be able to go up, I think nine at a time rather
14 than the whole group, and you'll be able to look into the
15 interior of the boat at that time and make whatever
16 observations that you think are important there.

17 After you've done that, we're going to have you come
18 around, and there's a forklift over there which only can carry
19 a couple of people at a time, but if you want to go up so you
20 can see the other side of the boat. You'll notice when you're
21 on the flat platform you could see the port side, the interior
22 of the port side but not the starboard side. So if we put it
23 up, you'll be able to have a similar view there.

24 There are a couple of features the parties have
25 suggested you pay attention to. There are some cutout areas

1 that you'll hear about; some places where a panel or two have
2 been cut out or something else removed. The parties agree that
3 you should take a look at what's called the engine block, which
4 is a white structure in the center, and anything else, of
5 course, that appears to you. You'll probably see writing that
6 we've heard about already in the evidence, there are blood
7 stains in various places that you may observe in the stern, and
8 anything else. Again, it's up to you to take your time. This
9 is the one time you will have to make these observations, all
10 right?

11 So I think with that, we can begin the process. If
12 you want to just start filing around, again, take your own
13 pace. When you're done, of course, we'll pile back into the
14 vehicles and we'll head back to the courtroom.

15 (The jurors examine the boat.)

16 THE COURT: May I add one other thing. To preserve
17 the integrity of the evidence, be sure you don't touch
18 anything. I just want to make that clear.

19 (The jurors continue to examine the boat.)

20 THE COURT: Jurors, this will be a forklift that will
21 lift you up. Anybody who doesn't want to do it, if you're
22 concerned about the height, you don't have to do it. But this
23 is your opportunity to do it. I've done it; it's safe.

24 (The jurors continue to examine the boat.)

25 THE COURT: Okay, jurors. That's it. Please, no

1 conversation about what you've seen. We'll be back in the vans
2 and get back to where it's warm, and hopefully there will be
3 hot coffee there. We'll resume when everybody is back in
4 place.

5 (The view adjourned at 8:53 a.m.)
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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 5/10/16